



Ninety – Sixth Legislature – First Session – 1999  
**Introducer's Statement of Intent**  
**LB 312**

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**Chairperson:** Senator Kermit A. Brashear  
**Committee:** Judiciary  
**Date of Hearing:** 02/25/99

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

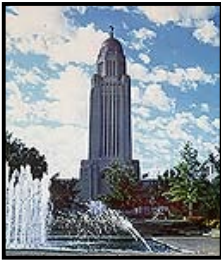
LB 312 provides for the disposition of an aircraft, vehicle, or vessel seized by law enforcement because it was used in the commission of the crime of intentionally discharging a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home, or inhabited camper unit or using a firearm to commit a felony.

When the property is seized, the person seizing it shall cause a petition for disposition of the property to be filed in district court within 10 days of the seizure. The petition shall describe the property, state the owner (if known), allege the elements of the violation, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served on the owner of the property or any person with an apparent interest in the property. In determining the identity of the owner or persons who appear to have an interest in the property, the county attorney shall conduct a records check to search for liens. If the owner is unknown, the county attorney shall provide notice of the seizure and the petition for disposition by publication once a week for four weeks in a newspaper of general circulation in the county of seizure.

At any time after seizure and prior to court disposition of the property, the owner of record may petition the court to release the property. The court shall release it upon a showing that the owner had no knowledge that the property has been used in violation of the crimes committed.

Any person having an interest in the property or against whom civil or criminal liability would exist if the property is used to facilitate the crimes committed, may appear and file an answer or demurrer to the petition alleging the person's interest or liability. If the claimant proves, at a hearing before the court, by a preponderance of the evidence that the claimant did not use or intend to use the property for the commission of the crimes, that the claimant has an interest in the property as owner, lienholder, or otherwise, acquired in good faith, and that the claimant had no knowledge that the property had been used to commit the crimes, the court shall order that the property or the value of the claimant's interest be returned to the claimant.

If there are no claims, all the claims are denied, or the value of the property exceeds all claims granted, and it is shown beyond a reasonable doubt that the property was used to facilitate the crimes, the court shall order disposition of the property when the property is no longer required as evidence in



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a criminal proceeding. The court may order the property to be sold or put to official use by the confiscating agency for a period of not more than one year and when the property is no longer necessary for official use, the property shall be sold. Official use means using the property directly to enforce laws prohibiting intentional discharge of a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home, or inhabited camper unit or the use of a firearm to commit a felony.

Any court costs, fees, storage and other expenses shall be charged against any person intervening as a claimant or owner, unless the person establishes the claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. The return, together with the court order, shall authorize the county clerk to issue a title to the purchaser.

The proceeds from the sale minus legal costs, charges, and claims allowed shall be paid to the county treasurer of the county in which the seizure was made. The county treasurer shall dispose of the proceeds in the manner provided for disposition of fines and penalties under the state constitution.

**Principal Introducer:**

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**Senator Deborah S. Suttle**